

**ASSEMBLY BILL**

**No. 1504**

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**Introduced by Assembly Member Morrell**

January 10, 2012

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An act to amend Sections 11342.548, 11346, 11346.3, and 11346.36 of, and to add Sections 11346.25 and 11346.37 to, the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1504, as introduced, Morrell. Administrative regulations.

The Administrative Procedure Act governs the procedures for the adoption, amendment, or repeal of regulations by state agencies and the review of those regulatory actions by the Office of Administrative Law. Existing law establishes procedures for notifying interested persons of the proposed adoption, amendment, or repeal of a regulation. Existing law requires a state agency that proposes to adopt, amend, or repeal an administrative regulation to assess the potential for adverse economic impact on California businesses and individuals, as prescribed.

This bill would require each state agency that is considering adopting, amending, or repealing a regulation, in addition to those existing economic impact analysis requirements, to complete an economic assessment of the proposed action at least 90 days prior to submitting a notice of proposed action to the office. The bill would subject the economic assessment to public comment. The bill would require the economic assessment to include specified analyses.

On and after November 1, 2013, existing law requires a state agency, proposing to adopt, amend, or repeal a regulation that will have an economic impact of more than \$50,000,000 on California businesses and individuals, to conduct a standardized regulatory impact assessment,

as specified, to be included in the initial statement of reasons for the regulation. Existing law requires the Department of Finance to adopt regulations for conducting the standardized regulatory impact assessment.

This bill would, on and after November 1, 2013, instead require a state agency to conduct a standardized regulatory impact assessment when the economic impact on California businesses and individuals exceeds \$25,000,000. The bill would require the standardized regulatory impact assessment to include an analysis of alternatives that meet the statutory purpose of the proposed regulation, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11342.548 of the Government Code is  
2 amended to read:

3 11342.548. "Major regulation" means any proposed adoption,  
4 amendment, or repeal of a regulation subject to review by the  
5 Office of Administrative Law pursuant to Article 6 (commencing  
6 with Section 11349) that will have an economic impact on  
7 California business enterprises and individuals in an amount  
8 exceeding ~~fifty~~ *twenty-five* million dollars ~~—(\$50,000,000)~~  
9 *(\$25,000,000)*, as estimated by the agency.

10 SEC. 2. Section 11346 of the Government Code is amended  
11 to read:

12 11346. (a) It is the purpose of this chapter to establish basic  
13 minimum procedural requirements for the adoption, amendment,  
14 or repeal of administrative regulations. Except as provided in  
15 Section 11346.1, the provisions of this chapter are applicable to  
16 the exercise of any quasi-legislative power conferred by any statute  
17 heretofore or hereafter enacted, but nothing in this chapter repeals  
18 or diminishes additional requirements imposed by any statute. This  
19 chapter shall not be superseded or modified by any subsequent  
20 legislation except to the extent that the legislation shall do so  
21 expressly.

22 (b) ~~As~~ *As provided in Sections 11346.25 and 11346.3, an agency*  
23 *that is considering adopting, amending, or repealing a regulation*  
24 ~~may~~ *shall* consult with interested persons before initiating  
25 regulatory action pursuant to this article.

1 SEC. 3. Section 11346.25 is added to the Government Code,  
2 to read:

3 11346.25. (a) An agency that is considering adopting,  
4 amending, or repealing a regulation shall complete an economic  
5 assessment of the proposed action 90 days prior to submitting a  
6 notice of proposed action to the office.

7 (b) The economic assessment shall be subject to public comment  
8 and shall include all of the following:

9 (1) A cost-benefit analysis, including whether the proposed  
10 action, if adopted, may result in the expenditure of moneys by any  
11 individual, business, state government entity, or local government  
12 entity.

13 (2) A description of the expenditure of any moneys identified  
14 pursuant to paragraph (1), including examples of how the proposed  
15 action may result in the expenditure of moneys by an individual,  
16 business, state entity, or local entity.

17 (3) An analysis of how the proposed action shall implement or  
18 meet the statutory purpose for which the proposed action is  
19 necessary, and the reason for its necessity.

20 (4) An analysis that takes into consideration and addresses the  
21 public comments received by the agency.

22 (5) In the case of a major regulation, an analysis that considers  
23 alternative regulations, which shall also be included in the analysis  
24 required under Section 11346.37.

25 (c) The agency shall notify the public of the public comment  
26 period for the economic assessment 90 days prior to submitting a  
27 notice of proposed action to the office, pursuant to the following:

28 (1) The agency shall identify all interested parties that may be  
29 affected by the proposed regulation.

30 (2) The agency shall post that identification on its Internet Web  
31 site along with a preliminary notice of proposed rulemaking and  
32 initial statement of reasons.

33 (3) The agency shall make public all comments that are received  
34 under this section.

35 (d) The economic assessment required by this section shall be  
36 prepared in addition to the economic impact analysis required  
37 under Section 11346.3, and shall be filed with the office with the  
38 notice of proposed action.

39 SEC. 4. Section 11346.3 of the Government Code is amended  
40 to read:

1 11346.3. (a) State agencies proposing to adopt, amend, or  
2 repeal any administrative regulation shall assess the potential for  
3 adverse economic impact on California business enterprises and  
4 individuals, avoiding the imposition of unnecessary or unreasonable  
5 regulations or reporting, recordkeeping, or compliance  
6 requirements. For purposes of this subdivision, assessing the  
7 potential for adverse economic impact shall require agencies, when  
8 proposing to adopt, amend, or repeal a regulation, to adhere to the  
9 following requirements, to the extent that these requirements do  
10 not conflict with other state or federal laws:

11 (1) The proposed adoption, amendment, or repeal of a regulation  
12 shall be based on adequate information concerning the need for,  
13 and consequences of, proposed governmental action.

14 (2) The state agency, prior to submitting a proposal to adopt,  
15 amend, or repeal a regulation to the office, shall consider the  
16 proposal's impact on business, with consideration of industries  
17 affected including the ability of California businesses to compete  
18 with businesses in other states. For purposes of evaluating the  
19 impact on the ability of California businesses to compete with  
20 businesses in other states, an agency shall consider, but not be  
21 limited to, information supplied by interested parties.

22 (3) An economic analysis prepared pursuant to this subdivision  
23 for a proposed regulation that is not a major regulation or that is  
24 a major regulation proposed prior to November 1, 2013, shall be  
25 prepared in accordance with subdivision (b). An economic analysis  
26 prepared pursuant to this subdivision for a major regulation  
27 proposed on or after November 1, 2013, shall be prepared in  
28 accordance with subdivision (c), and shall be included in the initial  
29 statement of reasons as required by Section 11346.2.

30 (b) (1) All state agencies proposing to adopt, amend, or repeal  
31 a regulation that is not a major regulation or that is a major  
32 regulation proposed prior to November 1, 2013, shall prepare an  
33 economic impact analysis that assesses whether and to what extent  
34 it will affect the following:

35 (A) The creation or elimination of jobs within the State of  
36 California.

37 (B) The creation of new businesses or the elimination of existing  
38 businesses within the State of California.

39 (C) The expansion of businesses currently doing business within  
40 the State of California.

1 (D) The benefits of the regulation to the health and welfare of  
2 California residents, worker safety, and the state's environment.

3 (2) This subdivision does not apply to the University of  
4 California, the Hastings College of the Law, or the Fair Political  
5 Practices Commission.

6 (3) Information required from state agencies for the purpose of  
7 completing the assessment may come from existing state  
8 publications.

9 (c) (1) Each state agency proposing to adopt, amend, or repeal  
10 a major regulation on or after November 1, 2013, shall prepare a  
11 standardized regulatory impact assessment in the manner prescribed  
12 by the Department of Finance pursuant to Section 11346.36. The  
13 standardized regulatory impact analysis shall address all of the  
14 following:

15 (A) The creation or elimination of jobs within the state.

16 (B) The creation of new businesses or the elimination of existing  
17 businesses within the state.

18 (C) The competitive advantages or disadvantages for businesses  
19 currently doing business within the state.

20 (D) The increase or decrease of investment in the state.

21 (E) The incentives for innovation in products, materials, or  
22 processes.

23 (F) The benefits of the regulations, including, but not limited  
24 to, benefits to the health, safety, and welfare of California residents,  
25 worker safety, and the state's environment and quality of life,  
26 among any other benefits identified by the agency.

27 (G) *An analysis of reasonable alternatives as required under*  
28 *Section 11346.37.*

29 (2) This subdivision shall not apply to the University of  
30 California, the Hastings College of the Law, or the Fair Political  
31 Practices Commission.

32 (3) Information required from state agencies for the purpose of  
33 completing the assessment may be derived from existing state,  
34 federal, or academic publications.

35 (d) Any administrative regulation adopted on or after January  
36 1, 1993, that requires a report shall not apply to businesses, unless  
37 the state agency adopting the regulation makes a finding that it is  
38 necessary for the health, safety, or welfare of the people of the  
39 state that the regulation apply to businesses.

(e) Analyses conducted pursuant to this section are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices, not reassess statutory policy. The baseline for the regulatory analysis shall be the most cost-effective set of regulatory measures that are equally effective in achieving the purpose of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

(f) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, and that has prepared a standardized regulatory impact assessment pursuant to subdivision (c), shall submit that assessment to the Department of Finance upon completion. The department shall comment, within 30 days of receiving such assessment, on the extent to which the assessment adheres to the regulations adopted pursuant to Section 11346.36. Upon receiving the comments from the department, the agency may update its analysis to reflect any comments received from the department and shall summarize the comments and the response of the agency along with a statement of the results of the updated analysis for the statement required by paragraph (10) of subdivision (a) of Section 11346.5.

SEC. 5. Section 11346.36 of the Government Code is amended to read:

11346.36. (a) Prior to November 1, 2013, the Department of Finance, in consultation with the office and other state agencies, shall adopt regulations for conducting the standardized regulatory impact analyses required by subdivision (c) of Section 11346.3.

(b) The regulations, at a minimum, shall assist the agencies in specifying the methodologies for:

(1) Assessing and determining the benefits and costs of the proposed regulation, expressed in monetary terms to the extent feasible and appropriate. Assessing the value of nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, the increase in the openness

1 and transparency of business and government and other  
2 nonmonetary benefits consistent with the statutory policy or other  
3 provisions of law.

4 (2) Comparing proposed regulatory alternatives with an  
5 established baseline so agencies can make analytical decisions for  
6 the adoption, amendment, or repeal of regulations necessary to  
7 determine that the proposed action is the most effective, or equally  
8 effective and less burdensome, alternative in carrying out the  
9 purpose for which the action is proposed, or the most cost-effective  
10 alternative to the economy and to affected private persons that  
11 would be equally effective in implementing the statutory policy  
12 or other provision of law.

13 (3) Determining the impact of a regulatory proposal on the state  
14 economy, businesses, and the public welfare, as described in  
15 subdivision (c) of Section 11346.3.

16 (4) Assessing the effects of a regulatory proposal on the General  
17 Fund and special funds of the state and affected local government  
18 agencies attributable to the proposed regulation.

19 (5) Determining the cost of enforcement and compliance to the  
20 agency and to affected business enterprises and individuals.

21 (6) Making the estimation described in Section 11342.548.

22 (7) *Complying with the requirements under Section 11346.37.*

23 (c) To the extent required by this chapter, the department shall  
24 convene a public hearing or hearings and take public comment on  
25 any draft regulation. Representatives from state agencies and the  
26 public at large shall be afforded the opportunity to review and  
27 comment on the draft regulation before the regulation is adopted  
28 in final form.

29 (d) State agencies shall provide the Director of Finance and the  
30 office ready access to their records and full information and  
31 reasonable assistance in any matter requested for purposes of  
32 developing the regulations required by this section. This  
33 subdivision shall not be construed to authorize an agency to provide  
34 access to records required by statute to be kept confidential.

35 (e) The standardized regulatory impact analysis prepared by the  
36 proposing agency shall be included in the initial statement of  
37 reasons for the regulation as provided in subdivision (b) of Section  
38 11346.2.

39 (f) On or before November 1, 2013, the department shall submit  
40 the adopted regulations to the Senate and Assembly Committees

1 on Governmental Organization and shall publish the adopted  
2 regulations in the State Administrative Manual.

3 SEC. 6. Section 11346.37 is added to the Government Code,  
4 to read:

5 11346.37. (a) An agency that proposes to adopt a major  
6 regulation pursuant to Section 11346.3 shall include in its  
7 standardized regulatory impact assessment both of the following:

8 (1) An assessment of the cost effectiveness of alternatives that  
9 meet the statutory purpose of the proposed major regulation and  
10 a determination of which alternative is the lowest cost alternative.

11 (2) A demonstration that the proposed major regulation is the  
12 most cost-effective approach to meeting the statutory purpose of  
13 the regulation as compared to all other alternatives.

14 (b) In implementing this section, an agency shall make a  
15 substantial effort to engage all regulated and interested parties in  
16 the development of alternatives that would satisfy the statutory  
17 purpose of the proposed major regulation. Public comment under  
18 Section 11346.25 shall be taken into consideration and utilized to  
19 refine the analysis under this section and to develop additional  
20 alternatives. The agency shall consider and address all comments  
21 made during the public comment period under Section 11346.25  
22 pertaining to its analysis of the alternatives, including why the  
23 agency selected the proposed major regulation as compared to the  
24 alternatives.

25 (c) The requirements of this section shall be in addition to the  
26 analysis required under paragraph (5) of subdivision (b) of Section  
27 11346.2.

28 (d) For purposes of this section, “alternative” means any other  
29 alternative approach or project that could be, or could have been,  
30 considered by the agency in lieu of the proposed major regulation.